IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

CRP.No. 341 of 2006()

CMA.81/2004 of V ADDL. DISTRICT COURT, ERNAKULAM
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REVN. PETITIONER/ RESPONDENT/DECREE HOLDER:

T.I.RAJAPPAN,
THEKKUMTHALA HOUSE, SHENOY ROAD,
KALOOR.

BY ADV. SRI.S.M.PREM
SMT.K.P.SANTHI

RESPONDENTS/PETITIONERS/JUDGMENT DEBTORS:
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1. C.O.FRANCIS, SON OF OUSEPH,
AGED 65 YEARS, CHERUPALLYPADATHU,
ELAVANKALPARAMBU, KOCHI-24.

2. MARY, WIFE OF FRANCIS,
CHERUPALLYPADATHU, ELAVANKALPARAMBU,
KOCHI-24.

BY ADV. SRI.K.R.VINOD

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. NO. 341 OF 2006

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Dated this the 4th day of July, 2007.

O R D E R

This revision petition is preferred against the order of the District Judge in CMA 81/04. By the said order the District Court set aside the order of the executing Court and directed the property to be resold in accordance with law. As per the judgment of the District Court as seen from paragraph 16, the property was sold in auction for an amount of Rs.69,413/-. The total amount the decree holder entitled to get was Rs.60,000/- and as the judgment debtor has paid an amount of Rs.3,000/- at an earlier date, the Court arrived at a figure of Rs.57,000/- as the amount due to the decree holder on the date of sale. When this is the fact, admittedly after the sale the decree holder is bound to deposit the balance amount of Rs.12,413/-. As per Order 21 Rule 85 the full amount of purchase money shall be paid by the purchaser into Court before the Court closes on the 15th day from the sale of the property. So unless and until the said amount is deposited then there is a statutory prohibition to confirm the sale. This view has been upheld by this Court in the decision reported in **Kadeeja v. Chandrika (2005 (1) KLT 434)**. This Court held that, "It cannot be gainsaid that the provisions of Rule 85 of Order

21 are mandatory and failure of the auction purchaser to deposit the balance purchase money within the statutory period of 15 days will result in the cancellation of the sale itself". Here, the auction purchaser is the decree holder who has sought permission of the Court under Order 21 Rule 72 CPC to participate in the sale but nevertheless when there is an excess amount he was duty bound to deposit it within a period of 15 days which he has not done. Therefore, legal effect is that the sale is invalid and it is void. It is precisely done by the District Court and therefore the said order does not call for any interference. Therefore, the CRP is dismissed.

The learned counsel for the revision petitioner submits that the decree holder is very old and there must be an expeditious disposal of the execution petition. I direct the decree holder himself to take expeditious steps to produce the draft proclamation etc. for fresh sale and the Court shall not adjourn it indefinitely but after giving an opportunity to the respondent to file his objections on the draft, proceed with the sale in accordance with law and dispose it of accordingly. The parties are directed to appear before the Court below on 15/7/2007.

M.N. KRISHNAN, JUDGE.

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